

Saul Ewing

November 28, 2012

Jeff S. Jordan, Esquire  
Supervisory Attorney  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 6649

Dear Mr. Jordan:

I write in response to your letter of September 25, 2012 in the above-referenced matter on behalf of the Republican State Committee of Delaware and John Fluharty in his capacity as treasurer (together, the "Party"). The letter enclosed a complaint (dated September 5, 2012) and a follow up (dated September 13) filed by the husband of Rose Izzo, who ran and lost in the Delaware Republican primary held September 11 to be the Party's congressional candidate.

1. The "Complaint" Is Premised On False Information. To begin, we believe that the complaint filed September 5, 2012, and amended on September 13, is premised on a false notion or otherwise upon rumors and hearsay which are simply unfounded. The September 13 complaint/letter states in part:

the entire attachment in toto is something that was passed out either by electronic means, by mail distribution or by handing out at meetings in the State of Delaware. Some of the meetings are attended by more than one hundred people.

This statement is simply not true. To begin, neither the attachment "in toto" nor any part of it has been distributed by the Party or Mr. Fluharty to the public by electronic means or by mail distribution. That simply is not true, nor does the complainant offer any evidence of such distribution. As to "handing out [the 8-page packet] at meetings ... attended by more than one hundred people," again this statement is not true - Mr. Fluharty did disburse 5-10 copies at a meeting, but that was all. What those folks who received the information may have done with it is unknown (although someone apparently scanned and forwarded the packet to Mr. and Mrs. Izzo), but there was simply no mass distribution by the Party of any kind. Other than a handful of copies at one meeting, nothing was distributed by the Party. Any suggestion that the Party was actively distributing the packet whether by mail, electronic means, or otherwise, is simply untrue.

P.O. Box 1266 • Wilmington, DE 19899-1266 • Phone: (302) 421-6800 • Fax: (302) 421-6813  
Courier Address: 222 Delaware Avenue, Suite 1200 • Wilmington, DE 19801-1611

DELAWARE MARYLAND MASSACHUSETTS NEW JERSEY NEW YORK PENNSYLVANIA WASHINGTON, DC

A DELAWARE LIMITED LIABILITY PARTNERSHIP

Richard A. Forsten  
Phone: (302) 421-6833  
Fax: (302) 421-5869  
RForsten@saul.com  
www.saul.com  
2012 DEC -3  
OFFICE OF  
COUNSEL

13044343186

The complainant also includes an email "forwarded to us with the attachment of the offending flyer." However, the email was not sent by the Party (but an individual), and so the email is not evidence of the party distributing anything by electronic means.

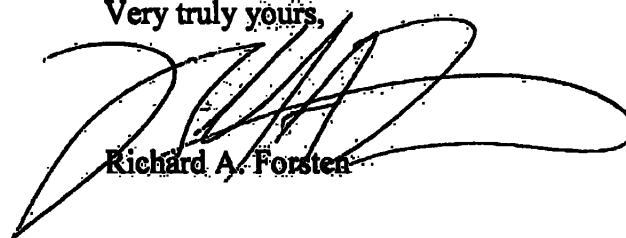
Finally, with his September 13 letter, the complainant includes (i) an excerpt from a blog which refers to receipt of an email, and (ii) a copy of a newspaper story which references an email touting a website called "www.WipeUpTheMess.com." However, nothing offered by the complainant suggests that the Party had anything to do with the creation of the website or was the source of an email about the website. In fact, to be clear, the Party had nothing to do with the website or any emails touting it. Moreover, neither of those two items (the blogpost or newspaper story) mention receipt of any packet akin to the one included with the September 13 letter. Indeed, the blogpost describes the email as asking various questions about Ms. Izzo that are not mentioned at all in the packet. In short, the packet and the emails appear to be two unrelated items.

**2. The Attachment Is Not A "Public Communication."** The complaint filed is also deficient because the 8-page packet about which it complains is simply not a "public communication" as defined by the FEC. A "public communication" is defined to mean "any broadcast, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." 11 CFR §100.26. The 8-page packet of information is not any of those things. Similarly, the packet is not an "electioneering communication" as defined by FEC regulations.

In sum, the limited distribution of the 8-page packet to less than 10 individuals at one meeting does not violate any FEC regulations. Moreover, to the extent the complaint alleges that the Party was connected with the offending website (at least, offending to Ms. Izzo) and emails touting that website, such allegations are untrue and the complaint offers no evidence to the contrary. Accordingly, we would ask that this matter be closed.

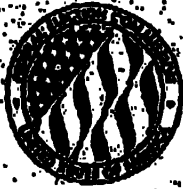
Please call should you have any questions or require any additional information. Thank you.

Very truly yours,



Richard A. Forsten

13044343187



## FEDERAL ELECTION COMMISSION

999 E Street, NW

Washington, DC 20463

OFFICE OF  
COMMUNICATIONS

2012 DEC -3 PM 2:15

FEDERAL ELECTION  
COMMISSIONSTATEMENT OF DESIGNATION OF COUNSEL  
Please use one form for each Respondent/Entity/Treasurer  
FAX (202) 218-8923MUR # 6649NAME OF COUNSEL: RICHARD FORSTENFIRM: SAUL EWINGADDRESS: 222 DELAWARE AVE., SUITE 1200WILMINGTON, DE 19801TELEPHONE OFFICE (302) 421-6833FAX (302) 421-5869

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

2/1/12  
Date

[Signature]  
Respondent/Agent Signature

Treasurer  
Title (Treasurer/Candidate/Owner)

NAMED RESPONDENT: JOHN FLUHARTY, REPUBLICAN  
STATE COMMITTEE  
OF DELAWARE

MAILING ADDRESS: 3301 LANCASTER PIKE, SUITE 4B  
(Please Print)

WILMINGTON, DE 19805

OFF  
TELEPHONE HOME (302) 668-1954

BUSINESS ( )

Information is being sought as part of an investigation being conducted by the Federal Election Commission and if confidentially provisions of 2 U.S.C. § 437g(a)(2)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.